

REMARKS

In this Amendment, independent claim 1 is amended to remove methods of preventing an Aspergillus infection, which the Office Action asserts as being anticipated or obvious over the prior art. Thus, the amended claims recite a method for treating an Aspergillus infection by administering thymosin alpha 1, which methods are neither disclosed nor suggested by the prior art. Applicants reserve the right to pursue methods of preventing an Aspergillus infection in one or more continuation applications.

Claims 4 and 9 are amended for antecedent basis and/or for consistency with the independent claim.

No new matter has been added by way of these amendments. Further, since this Amendment merely cancels an alternative embodiment previously recited in the claims, entry and consideration of this Amendment after Final is believed to be appropriate.

Entry and consideration of this Amendment are respectfully requested.

I. Response to Rejections under 35 U.S.C. § 102(b)

(1) At page 5 of the Office Action, claims 1, 2, 4, 5, 7, and 12 are rejected under 35 U.S.C. §102(b) as being anticipated by Chretien (US 6,001,799).

(2) At page 5 of the Office Action, claims 1-5, 7, 8, and 12 are rejected under 35 U.S.C. §102(b) as being anticipated by Goldstein (US 5,585,352).

(3) At page 5 of the Office Action, claims 1-8 and 12 are rejected under 35 U.S.C. §102(b) as being anticipated by Knutsen (WO 98/35696).

(4) At page 5 of the Office Action, claims 1-8 and 12 are rejected under 35 U.S.C. §102(e) as being allegedly anticipated by Rudolph (US 2005/0049191).

Specifically, the Office Action asserts that each of Chretien, Goldstein, Knutsen and Rudolph teach a method of preventing Aspergillus infection by administering thymosin alpha 1, because such a method is allegedly inherent in administering thymosin alpha 1 to patients. The Office Action does not assert that any of Chretien, Goldstein, Knutsen and Rudolph teach a method of treating an Aspergillus infection.

The claims have been amended to recite methods of treating an Aspergillus infection. Methods of preventing an Aspergillus infection have been canceled without prejudice.

Accordingly, withdrawal of these rejections is respectfully requested.

II. Response to Rejection under 35 U.S.C. § 103(a)

At pages 6-7 of the Office Action, claims 1-12 are rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over Wingard (*Bone Marrow Transplantation* (1997) 19: 343-347) in view of Knutsen (WO 98/35696).

Specifically, the Office Action asserts that Knutsen teaches a method of preventing Aspergillus infection by administering thymosin alpha 1 (in particular to bone marrow patients), because such is allegedly inherent in administering thymosin alpha 1 to patients. The Office Action also asserts, apparently in relation to dependent claims 9-11, that Wingard teaches administering Amphotericin B for Aspergillus infection, and thus the combination of thymosin alpha 1 and Amphotericin B would have been obvious.

However, neither Wingard nor Knutsen teach treating an Aspergillus infection by administering Thymosin alpha 1 as currently claimed, and the Office Action does not assert as much.

Accordingly, withdrawal of this rejection is respectfully requested.

CONCLUSION

In view of the foregoing, Applicants respectfully submit that this application is now in condition for allowance. However, the Examiner is requested to call the undersigned if any questions or comments arise.

The Director is hereby authorized to charge any appropriate fees under 37 C.F.R. §§1.16, 1.17, and 1.21 that may be required by this paper, and to credit any overpayment, to Deposit Account No. 50-1283.

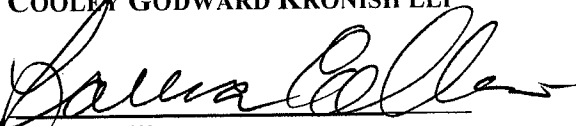
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